

RULE VII

DISCIPLINE

SECTION 7.1 CLASSIFIED SERVICE

This Rule shall be applicable to persons in the Classified Service appointed to regular positions from employment lists, who have successfully completed the probationary period for that position. Such persons shall only be removed for cause and in accordance with this Rule. All other persons in the Classified Service serve and may be removed by their appointing authorities without right of appeal under this section. (Amended 8-20-96)

The form of discipline imposed on persons in the Classified Service who are designated as exempt employees under the Fair Labor Standards Act (FLSA) shall be in conformance with the FLSA disciplinary regulations governing employee salaried exempt status. (Amended 5-14-96)

SECTION 7.1.1 EXECUTIVE SERVICE

Removals of persons in the Executive Service shall be made in accordance with and under the provisions of Section 909.2 of the County Charter.

SECTION 7.2 CAUSE FOR DISCIPLINARY ACTION

Any of the following shall be deemed sufficient cause for suspension, demotion, reprimand, transfer, or removal of any person:

- (a) That the employee has been guilty of incompetency;
- (b) That the employee has been guilty of inefficiency;
- (c) That the employee has been guilty of insubordination;
- (d) That the employee has been guilty of dishonesty;
- (e) That the employee has been guilty of intemperance;
- (f) That the employee has been guilty of immorality;
- (g) That the employee has been guilty of profanity;
- (h) That the employee has been guilty of discourteous treatment of the public or other employees;
- (i) That the employee has some permanent or chronic physical or mental disability which is incapacitating for proper job performance, or makes improper use of sick leave privileges;

- (j) That the employee has failed to pay just debts or has failed to make reasonable provision for future payment of just debts, whereby annoyance is caused a superior officer, or scandal is caused the service because of such failure;
- (k) That the employee has been convicted of a criminal offense involving moral turpitude. The word convicted shall be construed to mean a conviction by verdict, by plea of guilty, upon a judgment against the employee, upon a demurrer, or upon a judgment of a court, a jury having been waived, without regard to subsequent disposition of the case by suspension of sentence, probation, or otherwise.

The words moral turpitude shall be construed to mean any act of baseness, vileness or depravity; or any act contrary to justice, honesty, modesty or good morals; or any act done with deception, or through corrupt motives;

- (l) That the employee, through negligence or willful misconduct has caused damage to public property or waste of public supplies;
- (m) That the employee has been guilty of any conduct unbecoming an officer or employee of the County;
- (n) That the employee has been absent without leave, contrary to the rules of the Commission, or has failed to report after leave of absence has expired, or after such leave of absence has been disapproved or revoked and canceled by the Commission, provided, however, that if such absence or failure to report is excusable, the Commission may dismiss the charges;
- (o) That the employee has violated any of the provisions of the County Charter, or of these rules and regulations relating to conduct in the office of persons in the classified service;
- (p) That the employee has been convicted of a felony committed in furtherance of, or while participating in, a riot or civil disorder;
- (q) That the employee has been guilty of negligence resulting in harm or significant risk of harm to the public or the public service;
- (r) That the employee has been guilty of a failure of good behavior;
- (s) That the employee has been guilty of any other act that is incompatible with or inimical to the public service.

SECTION 7.2.1 NOTICE OF PROPOSED ACTION

- (a) Except as provided in subparagraph (b) of this section, before an appointing authority files any order in writing referred to in Section 7.3 of this Rule, which suspends, demotes or removes a person in the classified service pursuant to this rule, the pre-removal safeguards to the extent required by *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194 shall be followed. These pre-removal safeguards must include:

- (1) notice of the proposed action,
- (2) the reasons therefor,
- (3) a copy of the charges,
- (4) an opportunity to examine any materials upon which the action is based, and
- (5) the right to respond, either orally or in writing, to the appointing authority imposing the discipline.

A copy of this notice and receipt of proof of service shall be filed with the Commission with the notice required by Section 7.3. This notice shall be accompanied by a sealed envelope containing a list generally describing all the materials that the employee was given an opportunity to examine. The list shall be initialed by the employee in cases where the employee has in fact examined and/or received the materials prior to the imposition of discipline.

If for any reason the employee is unable or refuses to initial the list after examining the materials, the circumstances describing the refusal or inability shall be written on the list by the appointing authority. Such notice of proposed action shall be given a reasonable period of time prior to the date the discipline is to be imposed. (Amended 1-15-88)

- (b) In the event that emergency circumstances exist in which the immediate removal of an employee is essential to avert harm to the County or to the public, the appointing authority may dispense with the notice requirement imposed by paragraph (a) hereof and after giving the employee, by whatever means may be available, notice of the proposed action, the reasons therefore and a copy of the charges, and offering the employee an opportunity to immediately respond.

If the employee cannot be found at employee's place of work or residence, the appointing authority may thereafter proceed to impose discipline in the matter otherwise required by these rules. In the event the provisions of this subparagraph (b) are invoked by the appointing authority a complete statement of the reasons and the justification therefore, a copy of any notices and a sealed list of any materials that the employee was given an opportunity to examine and/or furnished the employee shall be filed with the Commission with the notice required by Section 7.3. (Amended 1-15-88)

SECTION 7.3 NOTICE GIVEN

- (a) Before a person may be removed, suspended, reprimanded or reduced in rank or compensation, the appointing authority shall serve on the person either personally or by certified mail, a copy of a written order stating the specific reasons for the disciplinary action.

Said order shall contain specific charges set forth clearly and with such particularity as will enable the employee to understand the charges and to answer to them and shall be filed with the Commission within five (5) days after service on the employee. The Commission may require the suspension of any employee against whom charges have been filed, pending a hearing thereon. (Amended 1-15-88)

- (b) Each order of removal, suspension, or reduction in rank or compensation shall also contain in substantially the following language, notice of the employee's right to appeal to the Commission:

"If you wish to appeal this order to the Civil Service Commission, you must file such appeal and an answer to the charges in writing with the Commission within ten (10) days after this order is received by you. Such appeal and answer to the charges must be in writing and delivered to the Commission at its office at 1600 Pacific Highway, San Diego, California, 92101, within the prescribed time." (Amended 1-15-88)

- (c) Reprimands may not be appealed to the Commission. Review of a reprimand may be pursued through the grievance procedure applicable to the employee's classification.

Each letter of reprimand shall also contain in substantially the following language, notice of the employee's right to review:

"If you wish to seek a review of this letter of reprimand, refer to the grievance procedure applicable to your classification. Such appeal must be in writing on the form provided by the County and within the time limits prescribed by the appropriate procedure."

SECTION 7.4 APPEAL AND ANSWER

An employee who has completed the required probationary period, who is removed, suspended or reduced in rank or compensation, may, within ten (10) days after receipt of the order of removal, suspension or reduction as herein before provided, appeal in writing to the Civil Service Commission from such order. An employee who appeals must also, within the same time period, file an answer to the charges with the Commission. (Amended 1-15-88)

SECTION 7.5 SERVICE OF APPEAL AND ANSWER ON APPOINTING AUTHORITY

A copy of the appeal and answer required by Section 7.4 shall be served, either personally or by mail by the employee on the appointing authority within ten (10) days after receipt by the employee of the order of discipline. (Amended 1-15-88)

SECTION 7.6 TIME FOR HEARING

The Commission shall, consistent with established filing deadlines and at its next regular meeting, following the filing of said appeal, appoint a hearing officer who will notice a date for the hearing thereof, and shall without delay, fully hear the matter and propose to affirm, modify or revoke such order, including increasing or decreasing the discipline imposed.

The Commission, in its discretion may appoint one of its members or a hearing board or officer to hear the appeal and submit findings and a proposed decision to the Commission. The Commission shall review the findings and a proposed decision before taking final action in the matter. (Amended 1-15-88)

SECTION 7.7 CONDUCT OF HEARING

The appellant shall be entitled to appear personally, produce evidence, and to have counsel and a public hearing. The appointing authority may also be represented by counsel. All hearings shall be governed by the Charter, and these rules of practice and procedure. Technical rules of evidence shall not apply to such hearings or investigations and no informality in any of the proceedings or in the matter of taking testimony shall invalidate any order, decision, rule or regulation made, approved or governed by the Commission.

SECTION 7.7.1 SUBPOENAS

The Commission has the power to issue subpoenas and subpoenas duces tecum, and to compensate persons subpoenaed. The president or the secretary of the Commission shall sign subpoenas and subpoenas duces tecum for witnesses for the appointing authority. The president or the secretary of the Commission shall also sign such subpoenas for witnesses for the appealing employee, upon the employee's written request and at the employees' cost; and the president or secretary may require the prepayment of such costs.

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Persons, other than County employees, who are subpoenaed shall be entitled to witness fees of \$12.00 a day and \$0.20 a mile, one way only. Such fees shall be paid by the party requesting the subpoena. County employees who are subpoenaed shall not be entitled to any witness fees but shall be entitled to paid service time. The Commission may disallow any fees or paid service time to a witness unnecessarily subpoenaed.

SECTION 7.7.2 INSPECTION OF DOCUMENTS AND INTERVIEW OF EMPLOYEES

An employee who has appealed to the Commission, or the employee's designated representative shall have the right to inspect any documents in the possession of or under the control of the appointing authority which are relevant to such appeal and which would be admissible in evidence at a hearing on such appeal.

The employee, or the employee's designated representative shall also have the right to interview other employees having knowledge of the acts or omissions upon which the removal, suspension or reduction in rank or compensation was based. Interviews of other employees and inspection of documents shall be at times and places reasonable for the employee and the appointing authority. (Amended 1-15-88)

SECTION 7.7.3 AMENDMENT OF CHARGES

At any time before the employee's appeal is submitted to the Commission for decision, the appointing authority may, with the consent of the Commission or the hearing board or officer appointed by the Commission, serve on the employee and file with the Commission an amended or supplemental statement of charges.

If the amended or supplemental charges present new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a defense thereto, but shall not be entitled to file a further answer unless the Commission or the hearing board or officer so orders. Any new causes or allegations shall be deemed controverted and any objections to the amended or supplemental charges may be made orally at the hearing.

SECTION 7.7.4 EXAMINATION OF EMPLOYEE AND OTHER PERSONS

At the hearing on the employee's appeal, the employee may be examined and may examine or cause any person to be examined in the manner provided in the Evidence Code. If such employee refuses to answer any question propounded upon examination after being directed by the Commission or hearing board or officer to answer, the Commission may order that the hearing on the appeal be stayed until the order is obeyed or may dismiss the appeal and affirm the order of removal, suspension or reduction.

SECTION 7.7.5 FAILURE TO APPEAR

If the employee refuses to appear or fails to appear, the Commission may order that the hearing on the appeal be stayed until the employee appears or may dismiss the appeal and affirm the order of removal, suspension, or demotion or transfer.

SECTION 7.8 FAILURE TO ANSWER

Failure on the part of an accused employee to file an answer within the time allowed in Section 7.5 shall be construed as an admission of the truth of the charges and judgment against said employee shall be entered forthwith and filed by the Commission. The Commission may upon the receipt from said accused employee of a statement setting forth reasons acceptable to the Commission for failure to file such answer set aside such peremptory judgment and proceed with the hearing of evidence submitted in the matter.

SECTION 7.9 MAXIMUM PERIOD OF SUSPENSION

Any suspension invoked under this rule against any one employee in the classified service, whether with or without pay, or for one or more periods, shall not aggregate more than 90 calendar days in any one calendar year, provided, however, where the charge upon which a suspension is the subject of criminal complaint or indictment filed against such employee, the period of suspension may exceed 90 calendar days and continue until, but not after, the expiration of 30 calendar days after the judgment of conviction or acquittal of the offense charge in the complaint or indictment has become final.

SECTION 7.10 CHARGES BY CITIZEN

Charges filed by any citizen of the County against any person in the classified service shall be verified under oath, and shall be supported by affidavit of one or more witnesses.

SECTION 7.11 FINDING AND DECISION

The finding and decision of the Commission shall be final, and shall be certified to the official from whose order the appeal is taken and shall forthwith be enforced and followed. The decision shall give notice of the time limits for judicial review as set forth in Section 7.13.

SECTION 7.12 RECORD FILED

A copy of the order in writing, a copy of the answer, together with a copy of the finding and decision of the Commission shall be filed as a public record in the office of the Commission.

SECTION 7.13 TIME LIMITS FOR JUDICIAL REVIEW

- (a) Judicial review of any decision of the Civil Service Commission of the County of San Diego, or of any officer or agent of the Civil Service Commission of the County of San Diego may be had pursuant to Code of Civil Procedure Section 1094.5 only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

- (b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision in any applicable provision of any statute, charter, ordinance, or rule, for the purposes of this section, the decision is final on the date it is made.

If there is such provision for reconsideration, the decision is final for the purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision, the decision is final for the purposes of this section on the date that reconsideration is rejected.

- (c) The complete record of the proceedings shall be prepared by the Civil Service Commission of the County of San Diego, or its officer, or agent which made the decision and shall be delivered to the party requesting such record within 90 days after filing a written request therefore. A request for the preparation of the record of the proceedings shall be filed with the person designated in the final decision. Such person shall, within ten days of such request, notify the party of the estimated cost of the preparation of the requested records.

The party requesting such record shall, within ten days of such notification, deposit with the person designated in the decision an amount sufficient to cover the estimated cost. If, during the preparation of the record, it appears that additional costs will be incurred, the party requesting such record may be notified and, if requested, shall deposit such additional amounts before the record will be completed.

If the cost of the preparation of the record exceeds the amount deposited, the party requesting such record shall pay this additional amount. If the amount deposited exceeds the cost, the difference shall be returned to the party requesting such record. Upon receiving the required deposit, the person designated in the decision shall promptly prepare such record in accordance with the request.

Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the Civil Service Commission of the County of San Diego, or its officer, or agent, all written evidence, and any other papers in the case.

- (d) If the party files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Code of Civil Procedure Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party or the party's attorney of record.

- (e) As used in this section, decision means any adjudicatory administrative decision made, after hearing, suspending, demoting, or dismissing an officer or employee of the County of San Diego.
- (f) In making a final decision as defined in subdivision (e), the Civil Service Commission of the County of San Diego shall provide notice to the party that the time within which judicial review must be sought is governed by this section. Upon giving notice of any decision subject to this section, the person responsible to issue such decision shall include in the decision a statement substantially as follows:

"The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable to the Civil Service Commission of the County of San Diego by Section 7.13 Rule VII of the rules of the Civil Service Commission of the County of San Diego. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with

_____(name and _____."
_____(address of designated person)

As used in this section, "party" means an officer or employee who has been suspended, demoted or dismissed.